

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 18, 2004

STATE OF TENNESSEE v. MICHAEL YARBROUGH

Appeal from the Circuit Court for Humphreys County
No. 10134 Allen W. Wallace, Judge

No. M2003-02993-CCA-R3-CD - Filed September 29, 2004

The Appellant, Michael Yarbrough, appeals the revocation of his community corrections sentence by the Humphreys County Circuit Court. Yarbrough was initially convicted of class C felony sale of cocaine and placed in the Community Corrections Program for a term of six years. Following a revocation hearing, Yarbrough was found to be in violation of his behavioral agreement contract, which resulted in the reinstatement of his sentence with the Department of Correction. On appeal, Yarbrough argues that the trial court's ruling was "arbitrary" and not justified by the evidence. After review, the judgment of the trial court is affirmed.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed

DAVID G. HAYES, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ALAN E. GLENN, JJ., joined.

Haylee A. Bradley, Assistant District Public Defender, Ashland City, Tennessee, for the Appellant, Michael Yarbrough.

Paul G. Summers, Attorney General and Reporter; Michael Moore, Solicitor General; Jennifer L. Bledsoe, Assistant Attorney General; and Lisa Donegan, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

On April 9, 2002, the Appellant received a six-year community corrections sentence following his conviction for the sale of cocaine. Within three months of his placement in community corrections, the Appellant was found to be in violation of program conditions and was ordered incarcerated for the period July 30, 2002, through June 13, 2003. After his release from confinement, he returned to community corrections supervision. Amenability to program rules and regulations was again short-lived. On July 15, July 24, and August 5, 2003, the Appellant failed to report as directed. On July 29, 2003, the Appellant tested positive for cocaine. After his second

return to community corrections, the Appellant made no payment toward his court costs or supervision fees. Additionally, the Appellant failed to maintain regular employment as agreed. These violations resulted in the issuance of a warrant on August 12, 2003, for “violation of community corrections.”

At the revocation hearing, the Appellant’s case officer testified that the Appellant failed to report as directed, tested positive for cocaine on July 29, 2003, and had paid nothing toward court costs and fees. With regard to verification of employment, the Appellant produced one check stub from Manpower for \$ 76.50. Testifying in his own behalf, the Appellant admitted that he often failed to report as directed because he couldn’t find “rides” to meet with his case officer and that it was “virtually impossible . . . to hold a job” when he had to visit his case officer twice a week. The Appellant denied he had ingested any drugs but admitted that he had been around drugs and postulated that “by handling it with his hands” it could have “come in through his skin.” When asked if he could follow the reporting rule if given a second chance, the Appellant replied, “It’s going to be real hard. But I’ll do my best.” Following this proof, the trial court revoked the Appellant’s community corrections sentence and ordered the remainder of the six-year sentence be served in the Department of Correction.

ANALYSIS

On appeal, the Appellant asserts that the trial court erred in revoking his sentence, contending that the court’s “decision was an arbitrary one and not a conscientious one, and [he] should have been allowed to remain on [community corrections.]” Upon a finding, by a preponderance of the evidence, that a defendant has violated the conditions of his agreement, a trial court retains the authority to revoke the defendant’s placement in a community corrections program and cause execution of the original judgment as it was entered. Tenn. Code Ann. § 40-36-106(e)(4) (2003). This court reviews revocation under an abuse of discretion standard. *State v. Stubblefield*, 953 S.W.2d 223, 226 (Tenn. Crim. App. 1997) (citing *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991)). Discretion is abused only if the record contains no substantial evidence to support the conclusion of the trial court that a violation has occurred. *State v. Gregory*, 96 S.W.2d 829, 832 (Tenn. Crim. App. 1997). This means that the evidence need only show that the trial judge has exercised “conscientious and intelligent judgment in making the decision rather than acting arbitrarily.” *State v. Leach*, 914 S.W.2d 104, 107 (Tenn. Crim. App. 1995) (citing *Stamps v. State*, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980)).

The Appellant’s conduct demonstrates that he is ill-suited for a sentence involving release in the community. The Appellant has rejected all attempts at rehabilitation. Indeed, this is the second violation on the same sentence for essentially the same reasons. In light of his refusal to comply with the program requirements, the trial court was clearly within its authority to order revocation of the Appellant’s placement in community corrections.

CONCLUSION

Based upon the foregoing, we conclude that the trial court did not abuse its discretion in ordering revocation of the Appellant's community corrections sentence. Accordingly, the judgment of the Humphreys County Circuit Court is affirmed.

DAVID G. HAYES, JUDGE